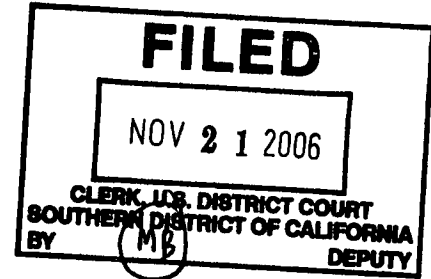


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UNITED STATES OF AMERICA



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
OCTAVIO RODOLFO ERIBEZ,)
)
Defendant.)

Magistrate Case No. 06MJ2042

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Carol C. Lam, United States Attorney, and William A. Hall Jr., Assistant United States Attorney, and defendant OCTAVIO RODOLFO ERIBEZ, by and through and with the advice and consent of defense counsel, J. Kerry Bader, Esq., that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C. § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **December 7, 2006.**

6 4. The material witness, Lorenza Lopez-Valentin, in this case:

7 a. Is an alien with no lawful right to enter or remain in the United States;

8 b. Entered or attempted to enter the United States illegally on or about
9 November 6, 2006;

10 c. Was found in a vehicle driven by defendant at the San Ysidro, California Port
11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that she was an
12 alien with no lawful right to enter or remain in the United States;

13 d. Was paying an undisclosed amount to others to be brought into the United
14 States illegally and/or transported illegally to her destination therein; and,

15 e. May be released and remanded immediately to the Department of Homeland
16 Security for return to her country of origin.

17 5. After the material witnesses are ordered released by the Court pursuant to this
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any
20 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral
21 attack, that:

22 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
23 substantive evidence;

24 b. The United States may elicit hearsay testimony from arresting agents
25 regarding any statements made by the material witness(es) provided in discovery, and such
26 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
27 against interest of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
 2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
 3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
 4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
 6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
 7 further that defendant has discussed the terms of this stipulation and joint motion with defense
 8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
 10 immediate release and remand of the above-named material witness(es) to the Department of
 11 Homeland Security for return to her country of origin.

12 It is STIPULATED AND AGREED this date.


13 Respectfully submitted,

14 CAROL C. LAM
 15 United States Attorney

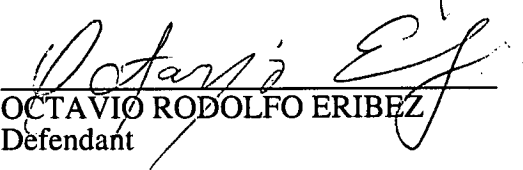
16 Dated: 11-21-06

17 
 18 WILLIAM A. HALL JR.
 19 Assistant United States Attorney

18 Dated: Nov 21, 2006

19 
 20 J. KERRY BADER
 21 Defense Counsel for ERIBEZ

20 Dated: Nov 21, 2006

21 
 22 OCTAVIO RODOLFO ERIBEZ
 23 Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to her country of origin.

SO ORDERED.

Dated: 11/21/06


United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)

Plaintiff)

vs.)

Erivez (1)

Defendant(s))

CRIMINAL NO. 06CR 2464-LAB

ORDER

RELEASING MATERIAL WITNESS

Booking No.

On order of the United States District/Magistrate Judge,

IT IS HEREBY ORDERED that the following named person heretofore committed to the custody of the United States Marshal as a material witness be released from custody: (Bond Posted / Case Disposed / Order of Court).

Lorenza Lopez-Valentin

DATED: 11/22/06

UNITED STATES DISTRICT/MAGISTRATE JUDGE

RECEIVED _____
DUSM

OR

W. SAMUEL HAMRICK, JR. Clerk

by 

Deputy Clerk